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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 180906820-8999-02]**

**RIN 0648-BI48**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2019 Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS implements 2019 specifications for the summer flounder and black sea bass fisheries and maintains previously-established 2019 specifications for the scup fishery. Additionally, this action reopens the February 2018 black sea bass recreational fishery and adjusts the current commercial incidental possession limit for scup. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species. The intent of this action is to inform the public of the specifications and management measures for the start of the 2019 fishing year for these three species. These specifications may be revised mid-year based on the results of ongoing stock assessments.

**DATES:** Effective January 1, 2019.

**ADDRESSES:** An environmental assessment (EA) was prepared for this action that describes these measures and other considered alternatives, and provides an analysis of the impacts of the measures and alternatives. Copies of the Summer Flounder, Scup, and Black Sea Bass 2019

Specifications, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at [http://www.mafmc.org/s/SFSBSB\\_2019\\_specs\\_EA.pdf](http://www.mafmc.org/s/SFSBSB_2019_specs_EA.pdf).

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

## **SUPPLEMENTARY INFORMATION:**

### **General Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations outline the Council's process for establishing specifications. Specifications in these fisheries include various catch and landing subdivisions, such as the commercial and recreational sector annual catch limits (ACL), annual catch targets (ACT), and sector-specific landing limits (*i.e.*, the commercial fishery quota and recreational harvest limit), as well as management measures, as needed, that are designed to ensure these catch limits will not be exceeded. Annual specifications may be established for three-year periods, and, in interim years, specifications are reviewed by the Council to ensure previously established multi-year specifications remain appropriate. The FMP also contains formulas to divide the specification catch limits into commercial and recreational fishery allocations, state-by-state quotas, and quota periods, depending on the species in question. Rulemaking for measures used to manage the recreational fisheries (minimum fish sizes, open seasons, and bag limits) for these three species occurs separately, and typically takes place in the spring of each year.

This action sets 2019 specifications for summer flounder and black sea bass. The previously-approved 2019 scup specifications (82 FR 60682; December 22, 2017) remain unchanged from the current two-year specifications and are maintained through this action.

An ongoing summer flounder benchmark assessment incorporating updated Marine Recreational Information Program (MRIP) data is scheduled to be available in early 2019. Operational assessments for black sea bass and scup will also be completed in April 2019 to incorporate revised MRIP data. Because new information for all three species is likely in the next few months, the Council and Commission's Summer Flounder, Scup, and Black Sea Bass Board only recommended interim specifications for 2019, and the Council and Board may develop mid-year changes to the summer flounder specifications, and possibly black sea bass specifications, to address the forthcoming updated assessment information.

The proposed rule for this action published in the *Federal Register* on November 15, 2018 (83 FR 57389), and comments were accepted through November 30, 2018. We received 11 comments.

### **2019 Summer Flounder Specifications**

At their August 2018 meeting, the Council and Board recommended interim summer flounder specifications for the start of the 2019 fishing year (Table 1). Compared to 2018, the interim 2019 commercial quota and recreational harvest limit are a 16-percent increase. The Council and Board intend to consider revising these interim summer flounder specifications at a joint meeting in February 2019 to address the results of the benchmark stock assessment. If a change in catch limits is recommended by the Council and Board, we anticipate updated catch limits could be in place this spring and would announce any adjustments through a future rule.

### **Table 1. Current 2018 and Final 2019 Summer Flounder Specifications.**

	2018 (current)		2019		Difference (%)
	million lb	mt	million lb	mt	
Overfishing Limits (OFL)	18.69	8,476	20.60	9,344	10
ABC	13.23	5,999	15.41	6,990	16
Commercial ACL	7.70	3,491	9.18	4,164	19
Commercial ACT	7.70	3,491	8.14*	3,692	19
Projected Commercial Discards	1.07	485	1.47	667	2
Commercial Quota	6.63	3,006	6.67*	3,030	16
Recreational ACL	5.53	2,508	6.22	2,821	12
Recreational ACT	5.53	2,508	6.22	2,821	12
Projected Recreational Discards	1.11	504	1.08	490	-3
Recreational Harvest Limit	4.42	2,004	5.15	2,336	16

\* As further explained below, a required accountability measure reduces the commercial ACT from 9.18 million pounds (4,164 mt) to 8.14 million pounds (3,692 mt) and reduces the commercial quota from 7.72 million pounds (3,502 mt) to 6.67 million pounds (3,030 mt).

The Council and Board recommended no adjustment to the commercial minimum fish size (14-inch (35.6 cm) total length), gear requirements, and possession limits. The Council and Board will develop recreational management measures (*i.e.*, minimum fish sizes, open seasons, and bag limits) for summer flounder this fall and NMFS rulemaking will occur in early spring of 2019.

#### *2019 Summer Flounder Commercial Non-Landing Accountability Measure*

Our final catch accounting shows that the 2017 commercial fishery exceeded its ACL by 21 percent and the ABC was exceeded by 7 percent, due to higher than expected discards in the commercial fishery. The newly-revised accountability measures (AM) regulations (83 FR 53825, October 25, 2018) require a scaled payback against the commercial fishery's ACT, based on the amount of the overage and the status of the summer flounder stock, using the most recent biological reference points. Based on our AMs, a scaled payback is required because the most recent assessment update (2016) indicated that the stock is experiencing overfishing and is not overfished.

The scaled payback based on the 2016 assessment status is 1.04 million lb (472 mt). This

overage, when applied to the 2019 commercial ACT of 9.18 million lb (3,502 mt), results in a commercial quota of 6.67 million lb (3,030 mt), after subtracting the 2019 projected estimated discards. The resulting quota is less than one percent higher than the 2018 quota. The timing of this final rule did not allow for the results of the 2018 benchmark assessment to be incorporated into the AM evaluation. Final results of that assessment are anticipated to be available in early 2019. If the assessment results in changes to the current stock determination criteria, any adjustments to the summer flounder specifications can incorporate a re-evaluation of this AM.

### *2019 Commercial State Quota Shares*

Table 2 summarizes the commercial summer flounder quotas for each state, incorporating the revised 2019 commercial ACT. This rule announces commercial state quota overage reductions necessary for fishing year 2019. Table 2 includes percent shares as outlined in § 648.102(c)(1)(i), the resultant 2019 commercial quotas, quota overages (as needed), and the final adjusted 2019 commercial quotas. The 2018 quota overage is determined by comparing landings for January through October 2018, plus any 2017 landings overage that was not previously addressed in establishing the 2018 summer flounder specifications, for each state. For Delaware, this includes continued repayment of overharvest from previous years.

**Table 2. Final State-by-State Commercial Summer Flounder Quotas for 2019.**

State	FMP Percent Share	2019 Initial Quota		2019 Adjusted Quota (ACL overage)		Overages through October 31, 2018		Final adjusted 2019 Quota, less overages	
		lb	kg	lb	kg	lb	kg	lb	kg
Maine	0.04756	3,672	1,665	3,172	1,439	0	0	3,172	1,439
New Hampshire	0.00046	36	16	31	14	0	0	31	14
Massachusetts	6.82046	526,540	235,406	454,925	202,922	-7,559	-3,429	447,366	202,922
Rhode Island	15.68298	1,210,726	549,176	1,046,055	474,482	0	0	1,046,055	474,482
Connecticut	2.25708	174,247	79,037	150,547	68,287	0	0	150,547	68,287
New York	7.64699	590,348	267,777	510,054	231,357	0	0	510,054	231,357
New Jersey	16.72499	1,291,169	585,665	1,115,557	506,008	0	0	1,115,557	506,008
Delaware	0.01779	1,373	-24,346	1,187	-24,431	-55,047	-24,969	-53,860	-24,431
Maryland	2.0391	157,419	71,404	136,008	61,692	0	0	136,008	61,692

Virginia	21.31676	1,645,654	746,456	1,421,828	644,930	0	0	1,421,828	644,930
North Carolina	27.44584	2,118,819	961,080	1,830,638	830,363	0	0	1,830,638	830,363
Total	100	7,720,000	3,497,682	6,670,000	3,021,494	0		6,661,255	3,021,494

Notes: Kilograms are as converted from pounds and may not necessarily add due to rounding. Total quota is the sum for all states with an allocation. A state with a negative number has a 2019 allocation of zero (0). Total adjusted 2019 quota, less overages, does not include negative allocations (i.e., Delaware's overage).

### *Delaware Summer Flounder Closure*

Table 2 shows the amount of overharvest from previous years for Delaware is greater than the amount of commercial quota allocated to Delaware for 2019. As a result, there is no quota available for 2019 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the NMFS Greater Atlantic Region Administrator has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits are prohibited for the 2019 calendar year, unless additional quota becomes available through a quota transfer and is announced in the *Federal Register*. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2019 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

### **2019 Black Sea Bass Specifications**

At the August meeting, the Council and Board made recommendations for the 2019 black sea bass specifications, but for reasons outlined below, we are maintaining status quo measures currently in place for 2018.

In June 2018, the Center provided the Council with a black sea bass data update, including updated catch, landings, and survey indices through 2017. Black sea bass biomass continues to be high and the 2015 year class appears to be above average in both the northern and southern surveys. Updated stock status information and biomass projections incorporating

data on the 2015 year class were not available as part of the Center-provided data update, but will be once the operational assessment is completed in April 2019.

The Council's Scientific and Statistical Committee (SSC) recommended a 2019 ABC of 7.97 million lb (3,615 mt), which was based on biomass projections from the 2016 benchmark stock assessment. This would have been an 11-percent reduction compared to the 2018 ABC. This decline in the ABC reflects the population responding to fishing at maximum sustainable yield and the decrease of the large 2011 year class, but does not incorporate the information on the 2015 year class. Based on this ABC recommendation, the Council and Board recommended the 2019 specifications that were 11 percent lower than those in place for 2018.

Following the Council and Board meeting, we requested that the Center perform a sensitivity analysis of the 2019 projection derived from the 2016 benchmark stock assessment. As previously described, that projection did not include the 2015 year class because those fish were too small to be widely captured in the surveys at the time of the 2016 assessment. This sensitivity analysis used various recruitment scenarios applied to the original projection and compared them to the most recent survey indices. The objective of this analysis was to see if that projection would have supported different specifications for 2019 had we been able to incorporate what we know now about the strength of the 2015 year class. The results suggest that the 2015 year class would have to be about 50 percent above average to allow for 2019 catch limits to be the same as what they were in 2018. Based on a comparison between the Center's 2018 spring survey results and average recruitment from 2003-2018, the 2015 year class appears to be more than 50 percent above average. Based on this information, we are maintaining status quo black sea bass specifications for 2019 (Table 3).

**Table 3. 2019 Black Sea Bass Specifications.**

	<b>million lb</b>	<b>mt</b>
<b>OFL</b>	10.29	4,667
<b>ABC</b>	8.94	4,055
<b>Commercial ACL</b>	4.35	1,974
<b>Commercial ACT</b>	4.35	1,974
<b>Projected Commercial Discards</b>	0.83	377
<b>Commercial Quota</b>	3.52	1,596
<b>Recreational ACL</b>	4.59	2,083
<b>Recreational ACT</b>	4.59	2,083
<b>Projected Recreational Discards</b>	0.93	422
<b>Recreational Harvest Limit</b>	3.66	1,661

Maintaining status quo allows for stability in the black sea bass commercial and recreational fisheries while we wait for the results of the MRIP operational assessment to be completed in April 2019. Once that information is available, the Council and Board may recommend adjusting black sea bass measures mid-year.

No adjustments are made to the commercial minimum fish size (11-inch (27.9 cm) total length), gear requirements, and possession limits.

#### *Recreational Black Sea Bass Wave 1 Fishery*

This action also reopens the black sea bass recreational fishery for the month of February (during MRIP Wave 1). The current Federal black sea bass recreational management measures (*i.e.*, a 12.5-inch (31.8-cm) minimum size and a possession limit of 15 fish) will apply to the fishery for this limited winter season. The intent of this action is to allow for some recreational fishing access during a portion of Wave 1 in 2019.

There are currently no MRIP survey estimates collected for Wave 1 except for occasional estimates in North Carolina, but catch from this time period must be accounted for, and count against the recreational harvest limit. Similar to last year, to account for the harvest during this 28-day season, the Council and Board recommended a coastwide catch estimate of 100,000 lb

(45.3 mt). The Board has further divided this coastwide catch estimate across the states. States that decide to participate in the Wave 1 fishery must account for this catch when developing their management measures for the remainder of the fishing year. Only two states participated in the 2018 February recreational fishery. The estimated catch was nominal. Measures for the rest of the 2019 recreational fishery will be developed through the winter for implementation in spring 2019.

**2019 Scup Specifications**

The scup fishery is currently operating under multi-year specifications projected through 2019. This action reaffirms the Council’s and Board’s previous recommendation for scup 2019 specifications. Those specifications result in the same commercial quota and recreational harvest limit as implemented in 2018 (Table 4).

**Table 4. Scup Specifications for 2019.**

	<b>million lb</b>	<b>mt</b>
<b>OFL</b>	41.03	18,612
<b>ABC</b>	36.43	16,525
<b>Commercial ACL</b>	28.42	12,890
<b>Commercial ACT</b>	28.42	12,890
<b>Commercial Discards</b>	4.43	2,011
<b>Commercial Quota</b>	23.98	10,879
<b>Recreational ACL</b>	8.01	3,636
<b>Recreational ACT</b>	8.01	3,636
<b>Recreational Discards</b>	0.65	293
<b>Recreational Harvest Limit</b>	7.37	3,342

The 2019 scup commercial quota is divided into three commercial fishery quota periods, as outlined in Table 5.

**Table 5. Commercial Scup Quota Allocations for 2019 by Quota Period.**

	2019 Initial Quota
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Quota Period	Percent Share	lb	mt
Winter I	45.11	10,820,000	4,908
Summer	38.95	9,340,986	4,237
Winter II	15.94	3,822,816	1,734
Total	100.0	23,983,802	10,879
Note: Metric tons are as converted from lb and may not necessarily total due to rounding.			

The current quota period possession limits are not changed by this action, and are outlined in Table 6. The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notice in the *Federal Register*. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 7.

**Table 6. Commercial Scup Possession Limits by Quota Period.**

Quota Period	Percent Share	Federal Possession Limits (Per Trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

**Table 7. Potential Increase in Winter II Possession Limits based on the Amount of Unused Scup Rolled Over from Winter I to Winter II.**

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0-499,999	0-226,796	0	0	12,000	5,443
12,000	5,443	500,000-999,999	226,796-453,592	1,500	680	13,500	6,123

12,000	5,443	1,000,000-1,499,999	453,592-680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000-1,999,999	680,389-907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000-2,500,000*	907,185-1,133,981	6,000	2,722	18,000	8,165

\* This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

*Adjustment to the Commercial Scup Gear-Based Possession Limit Thresholds*

This action adjusts the gear-based incidental possession limit for the commercial fishery. The incidental possession limit applies to vessels with commercial moratorium scup permits fishing with nets with diamond mesh smaller than 5 inches (12.7 cm) in diameter. The incidental possession limit is currently 1,000 lb (454 kg) during October 1-April 30 and 200 lb (91 kg) during May 1-September 30. The action adds another threshold period from April 15-June 15 to allow for higher retention in the small-mesh squid fishery that operates during that time and occasionally catches larger amounts of scup than the current limits allow to be landed (Table 8). During that time, vessels with scup moratorium permits using small mesh can land up to 2,000 lb (907 kg) of scup.

**Table 8. Adjustment to the Scup Incidental Possession Limit.**

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec
<b>Current</b>	1,000 lb (454 kg)				200 lb (91 kg)				1,000 lb (454 kg)			
<b>Revised</b>	1,000 lb (454 kg)			2,000 lb (907 kg)		200 lb (91 kg)			1,000 lb (454 kg)			

No adjustments are made to the current commercial minimum fish size (9-inch (22.9-cm) total length) and winter quota period directed-fishery possession limits.

**Comments and Responses**

On November 15, 2018, NMFS published the proposed specifications for public notice and comment. NMFS received six comments from individuals, and comments from the Jersey

Coast Anglers Association, the Recreational Fishing Alliance (RFA), the New York Recreational & For-Hire Fishing Alliance, the State of New York and the New York State Department of Environmental Conservation, and the Massachusetts Division of Marine Fisheries. No changes to the proposed specifications were made as a result of these comments.

*Comment 1:* Two members of the public, a representative of the Jersey Coast Anglers Association, and the Massachusetts Division of Marine Fisheries offered their support of the proposed specifications, particularly the decision to maintain status quo specifications for black sea bass.

*Response:* NMFS agrees and is implementing the proposed specifications for the reasons outlined in the preamble to this rule.

*Comment 2:* One individual commented that specifications for all three species should be reduced by 50 percent, but offered no rationale as to why.

*Response:* The reasons for implementing these specifications, which are outlined in the preamble to this rule, are based on the best scientific information available. This information does not suggest that 50-percent reductions in catch and harvest limits are appropriate.

*Comment 3:* Two commenters mentioned that they have noticed a decline in abundance of summer flounder and that the stock is being subject to overfishing.

*Response:* The most recent stock assessment update (2016) indicates that the summer flounder stock is not overfished, but is experiencing overfishing. The 2019 catch limits for summer flounder consider this information on stock status. We are waiting for the results of a new benchmark assessment and can respond to any adjustments that may be necessary based on new information as it becomes available.

*Comment 4:* One commenter representing the New York Recreational & For-Hire

Fishing Alliance was supportive of the summer flounder and scup specifications, but wanted higher black sea bass specifications, noting that the stock is healthy. This commenter also requested that the black sea bass Wave 1 fishery be open in January and February, and if that was not an option, then January would be preferable due to the better weather conditions.

*Response:* We agree that the black sea bass stock is healthy, which is why we are maintaining status quo measures, rather than reducing catch limits. The MRIP operational assessment will provide more updated information on the status of the black sea bass stock and will inform future management. The Council and Board may consider adjustments to the Wave 1 fishery next year, but for 2019 decided to recommend the same measures that were in place for 2018 (i.e., opening in February). A longer season in a future year would require a larger payback later in the year for states that choose to participate.

*Comment 5:* Although supportive of the scup and black sea bass specifications, the RFA stated that the revised MRIP information released this summer should be used to automatically adjust the current commercial and recreational allocations. As a result, RFA suggests that the recreational allocation should be increased and the recreational harvest limit for 2019 should be higher.

*Response:* NMFS disagrees that the updated MRIP information automatically adjusts the current commercial and recreational allocations. Adjustments to these allocations must occur through an amendment to the FMP. As mentioned throughout the preamble to this rule, we expect the final results from the new summer flounder assessment to be available early in 2019. Once that information is available, the Council and Board intend to review the results and determine if these 2019 specifications should be adjusted. The Council and Board also intend to consider adjustments to the summer flounder recreational fishery, including consideration of the

current 60/40 commercial and recreational allocation split, in a future amendment.

*Comment 6:* The State of New York and the New York State Department of Environmental Conservation submitted a letter stating that the commercial summer flounder state quotas date back to 1993 and have not been updated. The letter claims those allocations are based on unreliable data from 1993 and suggests NMFS implement a coastwide quota for the commercial fishery.

*Response:* The current regulations governing the FMP require that quota allocations be distributed based on the percentages outlined in Table 2. Adjustments to these quota allocations must be developed through an amendment to the FMP. The Council and Board are taking final action on an amendment considering such adjustments at their December 2019 meeting and will forward their recommendations to NMFS for approval. Adjustments to these state quota allocations are outside the scope of this action. If the Council and Board recommend commercial fishery allocation changes at the joint December meeting, NMFS expects to conduct rulemaking on those recommendations in 2019.

*Comment 7:* One commenter mentioned frustration over summer flounder recreational measures in state waters.

*Response:* This topic is outside of the scope of this action. The Council and NMFS will determine summer flounder recreational measures in Federal waters later next year, but do not make determinations about individual state measures.

### **Changes from the Proposed Rule**

There are no changes to the measures from the proposed rule.

### **Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that these specifications

are necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2019. This action establishes the final specifications (*i.e.*, annual catch limits) for the scup, summer flounder, and black sea bass fisheries for the 2019 fishing year, which begins on January 1, 2019.

This rule is being issued at the earliest possible date. Preparation of the proposed rule was dependent on the submission of the EA in support of the specifications that is developed by the Council. An initial draft was received by NMFS in mid-October, with a complete document submitted in early December 2018. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses, as required in rulemaking, and to evaluate the consistency

of the Council's recommendation with the Magnuson-Stevens Act and other applicable law. The proposed rule published on November 15, 2018, with a 15-day comment period ending November 30, 2018. Publication of the summer flounder quotas at the start of the fishing year that begins January 1 of each fishing year is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association v. Daley*.

If the 30-day delay in effectiveness were not waived, the lack of effective quota specifications on January 1, 2019, for summer flounder and black sea bass, would present significant confusion to the complex cooperative management regime governing these fisheries. The summer flounder and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2019. Individual states would be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS would be unable to control harvest in any way, as there would be no quotas in place for these two species until the regulations are effective. NMFS would be unable to control harvest or close the fishery, should landings exceed the quotas. All of these factors would result in a race for fish wherein uncontrolled landings could occur. Disproportionately large harvest occurring within the first weeks of 2019 could have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season.

## List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 11, 2018.

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Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.125, paragraphs (a)(1) and (5) are revised to read as follows:

#### **§ 648.125 Scup gear restrictions.**

(a) \* \* \*

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess more than 1,000 lb (454 kg) of scup from October 1 through April 14, more than 2,000 lb (907 kg) from April 15 through June 15, or more than 200 lb (91 kg) of scup from June 16 through September 30, unless fishing with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed and not

available for immediate use as defined in § 648.2.

\* \* \* \* \*

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 1,000 lb (454 kg) or more of scup from October 1 through April 14, 2,000 lb (907 kg) or more of scup from April 15 through June 15, or 200 lb (90.7 kg) or more of scup from June 16 through September 30, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed and not available for immediate use as defined in § 648.2, and that can be shown not to have been in recent use, is considered to be not available for immediate use.

\* \* \* \* \*

3. Section 648.146 is revised to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from February 1 through February 28, May 15 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2018-27213 Filed: 12/14/2018 8:45 am; Publication Date: 12/17/2018]